

provided by the institution to the inpatient, provided that such services are not available to the individual under the State's approved title XIX plan.

[38 FR 26379, Sept. 20, 1973, as amended at 38 FR 32912, Nov. 29, 1973]

PART 234—FINANCIAL ASSISTANCE TO INDIVIDUALS

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AUTHORITY: 42 U.S.C. 602, 603, 606, and 1302.

§ 234.11 Assistance in the form of money payments.

(a) Federal financial participation is available in money payments made under a State plan under title I, IV-A, X, XIV, or XVI of the Social Security Act to eligible families and individuals. Money payments are payments in cash, checks, or warrants immediately redeemable at par, made to the grantee or his legal representative with no restrictions imposed by the agency on the use of funds by the individual.

(b) [Reserved]

[36 FR 22238, Nov. 23, 1971, as amended at 51 FR 9206, Mar. 18, 1986]

§ 234.60 Protective, vendor and two-party payments for dependent children.

(a) *State plan requirements.* (1) If a State plan for AFDC under title IV-A of the Social Security Act provides for protective, vendor and two-party payments for cases other than failure to participate in the Job Opportunities and Basic Skills Training (JOBS) Program under § 250.34(d), or failure by the caretaker relative to meet the eligibility requirements of § 232.11, 232.12, or 232.13 of this chapter. It must meet the requirements in paragraphs (a) (2) through (11) of this section. In addition, the plan may provide for protec-

tive, vendor, and two-party payments at the request of recipients as provided in paragraph (a)(14) of this section.

(2)(i) Methods will be in effect to identify children whose relatives have demonstrated such an inability to manage funds that payments to the relative have not been or are not currently used in the best interest of the child. This means that the relative has misused funds to such an extent that allowing him or her to manage the AFDC grant is a threat to the health or safety of the child.

(ii) States will establish criteria to determine if mismanagement exists. Under this provision, States may elect to use as one criterion a presumption of mismanagement based on a recipient's nonpayment of rent.

(iii) Under State agency procedures, the recipient shall be notified whenever a creditor requests a protective, vendor, or two-party payment for mismanagement on the basis of nonpayment of bills.

(iv) The recipient shall be notified by the agency of a decision not to use a protective, vendor, or two-party payment if such payment has been requested by a creditor.

(v) A statement of the specific reasons that demonstrate the need for making protective, vendor, and two-party payments must be placed in the file of the child involved.

(3) Criteria will be established to identify the circumstances under which protective, vendor, or two-party payments will be made in whole or in part to:

(i) Another individual who is interested in or concerned with the welfare of the child or relative; or

(ii) A person or persons furnishing food, living accommodations or other goods, services, or items to or for the child, relative, or essential person.

(4) Procedures will be established for making protective, vendor, or two-party payments. Under this provision, part of the payment may be made to the family and part may be made to a protective payee or to a vendor, or part may be made in the form of two-party payments, i.e., checks which are drawn jointly to the order of the recipient and the person furnishing goods, services,

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or items and negotiable only upon endorsement by both the recipient and the other person.

(5)-(6) [Reserved]

(7) Standards will be established for selection:

(i) Of protective payees, who are interested in or concerned with the recipient's welfare, to act for the recipient in receiving and managing assistance, with the selection of a protective payee being made by the recipient, or with his participation and consent, to the extent possible. If it is in the best interest of the recipient for a staff member of a private agency, of the public welfare department, or of any other appropriate organization to serve as a protective payee, such selection will be made preferably from the staff of an agency or that part of the agency providing protective services for families; and the public welfare department will employ such additional staff as may be necessary to provide protective payees. The selection will not include: The executive head of the agency administering public assistance; the person determining financial eligibility for the family; special investigative or resource staff; or staff handling fiscal processes related to the recipient; or landlords, grocers, or other vendors of goods, services, or items dealing directly with the recipient.

(ii) Of such persons providing goods, services, or items with the selection of such persons being made by the recipient, or with his participation and consent, to the extent possible.

(8) The agency will undertake and continue special efforts to develop greater ability on the part of the relative to manage funds in such manner as to protect the welfare of the family.

(9) Review will be made as frequently as indicated by the individual's circumstances, and at least once every 12 months, of:

(i) The need for protective, vendor, and two-party payments; and

(ii) The way in which a protective payee's responsibilities are carried out.

(10) Provision will be made for termination of protective payments, or payments to a person furnishing goods or services, as follows:

(i) When relatives are considered able to manage funds in the best interest of

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the child, there will be a return to money payment status.

(ii) When it appears that need for protective, vendor, or two-party payments will continue or is likely to continue beyond 2 years because all efforts have not resulted in sufficiently improved use of assistance in behalf of the child, judicial appointment of a guardian or other legal representative will be sought and such payments will terminate when the appointment has been made.

(11)(i) Opportunity for a fair hearing pursuant to § 205.10 will be given to any individual claiming assistance in relation to the determination:

(A) That a protective, vendor, and two-party payment should be made or continued.

(B) As to the payee selected.

(ii) In cases where the agency has elected the option to presume mismanagement based on a recipient's nonpayment of rent pursuant to paragraph (a)(2)(ii), the agency may also elect the option to provide the opportunity for a fair hearing pursuant to § 205.10 either before or after the manner or form of payment has been changed for these cases.

(12) In cases where an individual is sanctioned for failure to participate in WIN, employment search, CWEP, or JOBS, the State plan must provide that when protective or vendor payments are made pursuant to § 224.52(a)(1), § 238.22, § 240.22(a)(1), § 240.22(b)(1) and § 250.34(d) of this chapter, only paragraphs (a)(7), (a)(9)(ii), and (a)(11)(i) and (ii) of this section will be applicable. Under these circumstances, when protective payments are made, the entire payment will be made to the protective payee; and when vendor payments are made, at least the greater part of the payment will be through this method. However, if after making all reasonable efforts, the State agency is unable to locate an appropriate individual to whom protective payments can be made, the State may continue to make payments on behalf of the remaining members of the assistance unit to the sanctioned caretaker relative. Provision will be made for termination of protective payments, or payments to a person furnishing goods or services, with return

to money payment status when adults who refused training, employment, or participation in employment search without good cause either accept training, employment, or employment search or agree to do so. In the case of continuing refusal of the relative to participate, payments will be continued for the children in the home in accordance with this paragraph.

(13) For cases in which a caretaker relative fails to meet the eligibility requirements of §§ 232.11, 232.12, or 232.13 of this chapter by failing to assign rights to support or cooperate in determining paternity, securing support, or identifying and providing information to assist the State in pursuing third party liability for medical services, the State plan must provide that only the requirements of paragraphs (a)(7) and (9)(ii) of this section will be applicable. For such cases, the entire amount of the assistance payment will be in the form of protective or vendor payments. These protective or vendor payments will be terminated, with return to money payment status, only upon compliance by the caretaker relative with the eligibility requirements of §§ 232.11, 232.12, and 232.13 of this chapter. However, if after making reasonable efforts, the State agency is unable to locate an appropriate individual to whom protective payments can be made, the State may continue to make payments to the sanctioned caretaker relative on behalf of the remaining members of the assistance unit.

(14) If the plan provides for protective, vendor, or two-party payments:

(i) The State may use any combination of protective, vendor, or two-party payments (at the request of the recipient),

(ii) The request must be in writing from the recipient to whom payment would otherwise be made in an unrestricted manner and must be recorded or retained in the case file, and

(iii) The restriction will be discontinued promptly upon the written request of the recipient who initiated it.

(b) *Federal financial participation.* Federal financial participation is available in payments which otherwise qualify as money payments with respect to an eligible dependent child, but which are made as protective, vendor or two-

party payments under this section. Payrolls must identify protective, vendor, or two-party payments either by use of a separate payroll for these cases or by using a special identifying code or symbol on the regular payroll. The payment must be supported by an authorization of award through amendment of an existing authorization document for each case or by preparation of a separate authorization document. In either instance, the authorization document must be a formal agency record signed by a responsible agency official, showing the name of each eligible child and relative, the amount of payment authorized and the name of the protective, vendor or two-party payee.

[37 FR 9025, May 4, 1972, as amended at 37 FR 12202, June 20, 1972; 45 FR 20480, Mar. 28, 1980; 47 FR 5682, Feb. 5, 1982; 49 FR 35603, Sept. 10, 1984; 51 FR 9206, Mar. 18, 1986; 54 FR 42244, Oct. 13, 1989; 56 FR 8932, Mar. 4, 1991; 57 FR 30160, July 8, 1992]

§ 234.70 Protective payments for the aged, blind, or disabled.

(a) *State plan requirements.* If a State plan for OAA, AB, APTD, or AABD under the Social Security Act includes provisions for protective payments, the State plan must provide that:

(1) Methods will be in effect to determine that needy individuals have, by reason of physical or mental condition, such inability to manage funds that making payment to them would be contrary to their welfare; such methods to include medical or psychological evaluations, or other reports of physical or mental conditions including observation of gross conditions such as extensive paralysis, serious mental retardation, continued disorientation, or severe memory loss.

(2) There will be responsibility to assure referral to social services for appropriate action to protect recipients where problems and needs for services and care of the recipients are manifestly beyond the ability of the protective payee to handle. (See paragraph (a)(5) of this section.)

(3) Standards will be established for selection of protective payees who are